

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)

Present:

Mr. Justice A.H.M. Shamsuddin Choudhury

And

Mr. Justice Jahangir Hossain

WRIT PETITION NO. 7078 OF 2011.

IN THE MATTER OF :

An application under Article 102(2) of the
Constitution of the People's Republic of
Bangladesh;

A N D

IN THE MATTER OF :

Saju Hosein

... Petitioner

-Versus-

Press Appellate Board, represented by it's
Chairman, Mr. Justice B.K. Das, Bangladesh
Press Council of House No. 40, Topkhana
Road, Segun Bagicha, Dhaka and others.

... Respondents

Mr. Mainul Hosein with

Mr. Manjur Kader and

Mr. Shamim-Ul Alam, Advocates,

... For the Petitioner

Mr. Abdul Matin Khasru, with

Ms. Rumeen Farhana, Advocates

... For the Respondent No. 2.

Mr. M. K. Rahman, Additional Attorney

General with

Mr. A.B.M. Altaf Hossain, DAG

... For the Respondents

Heard on 26.10.2011, 20.11.2011 and 22.11.2011

And Judgment on: 23rd November, 2011.

A.H.M.Shamsuddin Choudhury,J.-

The Rule under adjudication, issued on 08.08.2011 was in
following terms:

“Let a Rule Nisi be issued calling upon the respondents to show

cause as to why the impugned judgment and order dated 27.07.2011

(Annexure-B) of the Press Appellate Board, Bangladesh Press Council of House No. 40, Topkhana Road, Segun Bagicha, Dhaka-1000 should not be declared to have been issued without lawful authority and is of no legal effect and a direction should not be issued upon respondent No. 3 for authentication of the petitioner's declaration either for the Daily Ittehad or the Daily Deshkal within 60 (sixty) days under Section 12(4) of the Press and Publications (Declaration and Registration) Act, 1973 and/or pass such other or further order or orders as to this Court may seem fit and proper".

Averments figured in the petition are summarized below:

After obtaining definite information from one Mr. Oli Ahad that he had divested all his right in the Weekly Ittehad in favour of one Mr. Akhtarul Alam, the petitioner decided to file an application for the authentication of Declaration in her favour under the Press and Publications (Declaration and Registration) Act, 1973 (hereinafter referred as the Act) with the District Magistrate, Dhaka, (henceforth the DM) on 17th January, 2010 for the Daily Ittehad or the Daily

Deshkal, knowing that declarations of both the dailies had become a nullity for non-application for a long period.

The petitioner suggested two names: the Daily Ittehad and the Daily Deshkal but expressed preference for the Daily Ittehad for some sentimental reasons because late Mr. Tafazzal Hossain Manik Miah, the progenitor of the petitioner's husband, once worked for Daily Ittehad in Kolkata.

When it was detected that the DM without being explicitly negative and without showing any reason for his passivity on the petitioner's application for a period over sixty days, the latter filed an appeal to the Press Appellate Board (henceforth the Board).

Only at the stage of hearing of the appeal, which commenced on 3.8.2010, one Ms. Rumeena Farhana, respondent No. 2, an offspring of Mr. Oli Ahad, appeared before the Board and demonstrated her interest in the Weekly Ittehad at a sudden inspiration, yet the 1st Board attributed serious consideration to her claim.

A previously constituted Board, after hearing all sides, pronounced judgment on 12.08.2010, endorsing the petitioner's claim as there existed no Declaration for the Daily Ittehad. The Board drew a distinction between a weekly and a daily newspaper for the purpose of Declaration that and observed that the respondent No. 2 was free to pursue her claim for the Weekly Ittehad (There existed two Ittehads, a daily one and a weekly one, separately at the same time, under separate Declarations).

The respondent No. 2, named above, filed Writ Petition No. 7186 of 2010, challenging the aforementioned judgment and order of the Board, invoking every reason conceivable. Their Lordships of this Division however, remanded the matter for a hearing de-novo, as the judgment and order were not signed by all the three members of the Board.

The presently constituted Board under a new Chairman, passed its judgment, dated 27.7.2011, reversing the Board's earlier judgment, dated 12.8.2010 stating that as the petitioner's application has not

been rejected under section 20(2) of the Act, the appellant (the respondent no. 2 herein) had no grievance.

The incumbent Board failed to conceal its enthusiasm and went as far as to offer protection to the DM, the respondent No. 3, against contempt of court for taking on his own shoulder the very subject matter of newspaper Declaration, flouting the High Court Division's direction to have the same decided by the Board, particularly when the Board was in seisin of the matter.

The petitioner got dissatisfied by the one-sided findings of the Board. The issue does not revolve round the question of Declaration only, as applied for, but also the propriety of the judicial process and the credibility of the Board, in upholding the press freedom under the law and the Constitution, is also pertinent.

Relevant extract of the impugned judgment is reproduced below:-

“तःनःतःरःजः वः गःवःरःतःःःः तःकःवः अःवःतः कः तः बःवः, मःयःःःः वः iःlःvः-कःवःiः bःxःiः वःeःःः nःlः qःi
तःकःvः कःvःiःY तः lःvः hःvःqः bःvः| Aःvःgःiःvः gःtःbः कःvःiः eःZःgःvःbः Aःvःcःxःjः wःU तःvःtःqःiः कःvःiः gःZः कःvःiःY NःtःUःnःbः
Gःeःsः GःBः Aःvःcःxःjः wःU AःvःBःtःbःiः tःPःvःtःLः iः qःYःxःqः bःqः|”

The appellant before the Board, i.e. the petitioner before us was aggrieved under section 12(4), not under Section 20(2), because the DM failed to dispose of her application within the stipulated sixty days period, yet the Board slipped out of the orbit in denying to itself jurisdiction by erroneously holding that the petitioner’s appeal before it was not maintainable, because the appellant was not an aggrieved person under Section 20(2) of the Act, notwithstanding that the appellant’s case was that she is an aggrieved person under Section 12(4) of the Act because the DM has failed to dispose of her application for fresh Declaration for the Daily Ittehad or the Deshkal within 60 days. As the appellant’s claim before the Board below was not structured on the claim that a Declaration was previously authenticated in her

favour and that the same was subsequently revoked, question of invocation of Section 20(2) never arose.

The impugned judgment and order, enabling the Weekly Ittehad to remain in publication, is arbitrary and untenable in law and on fact. In the earlier writ petition, the respondent No. 2 herself, who was petitioner therein, stated that a deed of transfer was executed on 6.3.2008 by which Mr. Oli Ahad gave up all his rights and title on the Weekly Ittehad in favour of one Mr. Akhtar-ul-Alam and thereafter, Mr. Oli Ahad was not in a position to publish the weekly and nobody else had Declaration to publish the same.

As Ms. Rumeena Farhana's application for authentication of Declaration in respect to the Weekly Ittehad is yet to be disposed of by the DM, the order of the Board, allowing Ms. Rumeena Farhana to publish the newspaper is without jurisdiction and is of no legal effect, in as much as such an act amounts to usurpation of the DM's Power under section 7 of the Act.

The learned Board, without applying its judicial mind on the facts and the law involved, felt that as the Declaration of the Weekly Ittehad has not been formally cancelled the same was still an extant one, notwithstanding the clear stipulation in Section 9(3)b that a Declaration of a weekly faces an automatic mortality if the news paper concerned is not published for six months after having once been published, and that no formal order to that effect is needed.

The Board acted malafide and without lawful authority in ignoring, without reason, the finding in the earlier judgment of the Board to the effect that the declaration of the Weekly Ittehad became null and void for non-publication for six months after Mr. Oli Ahad executed the deed of transfer on 6.3.2008, in favour Mr. Akhtarul-ul Alam, well before the respondent No. 2 filed her application on 17.1.2010.

When, by operation of law, a newspaper's Declaration plunges into nullity, no question of formally canceling the same by any

separate order arises and so the Board erred in law in holding that the Weekly Ittehad's Declaration remains valid for non-cancellation.

As the judgment and order of the Board is without jurisdiction and is of no legal effect, the petitioner is entitled to have a direction from this court to the issued upon the DM, requiring the latter to dispose of her application, dated 17.01.2010, for authentication of the Declaration, either for the Dainik Deshkal or Daily Ittehad, within 60 days because both the Declarations had been reduced to nullity by operation of Section 9(3)(b) of the Act, years ago.

The respondent No. 2 has filed an affidavit-in-opposition, gist of the contents of which are summarised below;

Mr. Ahad had been publishing Ittehad regularly without interlude. When Mr. Ahad embraced severe ailment, considering his frailty, he executed a Deed of Transfer of Ittehad in favour of one Mr. Akter-UI-Alam. However, before completion of all formalities of the execution and completion of transfer procedure, i.e. before signing "Form-C", Mr. Akter-UI-Alam died and Mr. Ahad, vide another

Deed, Cancelled the Deed of Transfer. A Declaration cannot be transferred in any manner. Existing publisher can only sign "Form C" and resign from his post as publisher. Any interested person can, afterwards, file an application to the DM by executing "Form B", and it is the DM who has the exclusive power and authority to authenticate the Declaration in the applicant's name. As such, unless "Form C" has been signed, Form B cannot be acted upon. In the instant case, as Mr. Ahad never signed "Form C", the Declaration could never be authenticated in the name of late Mr. Akter-Ul Alam. So the Declaration has remained in the name of Mr. Ahad at all times, a fact that has repeatedly been admitted by the Government.

Thereafter, from the year 1972, the declaration of Ittehad was in the name of Mr. Oli Ahad, who thereafter, vide a letter, informed the DM that he had appointed his daughter, Barrister Rumeen Farhana, as the Editor (acting) of Ittehad and changed the address of the press. Thence Mr. Ahad, vide another communication, dated 07.08.2010, requested the DM to take necessary steps to accord authenticate the

Declaration in her favour to enable her to work as the Editor of Ittehad.

In the meantime, one Mrs. Saju Hosein, applied to the DM for authentication of Declaration for either Ittehad or Desh Kal. The DM, vide his letter dated 02.03.2010, categorically stated that the Declaration of Ittehad is still in the name of Mr. Oli Ahad, which has not yet been cancelled.

Thereafter, Saju Hosein, being aggrieved, filed a P A B Application to the respondent No.1 on 24.04.2010 praying for an authentication of Declaration for Ittehad in her name under section 12(4) of the Act. In response, the respondent No. 3 emphatically stated that the Declaration for Ittehad still stood in the name of Mr. Oli Ahad, the same is valid and has not yet been cancelled and that the Department of Film and Publication (DFP) have already been intimated of this fact and the DFP had refused to give any clearance to Mrs. Saju Hosein.

The matter was heard by the Board on 19.07.2010, 03.08.2010 and on 03.08.2010 and the Board fixed 12.08.2010 as next date. On 03.08.2010 Barrister Rumeen Farhana was present on behalf of Mr. Oli Ahad. In the meantime the DM, vide its Memo dated 10.08.2010, requested for a day's adjournment of hearing and stated that it would be difficult for him to send any representative on 12.08.2010 due to his preoccupation for the approaching national mourning day on 15.08.2010.

On 12.08.2010 the Board, without considering the Memo dated 10.08.2010, filed by the DM, passed the order, allowing the appeal with a direction to authenticate the Declaration of Ittehad in favour of Mrs. Saju Hussain within 15(fifteen) days of receiving the copy of the order, stating that in case of failure to do so, the order dated 12.08.2010 will be considered as the authentication of the Declaration for printing and publishing Daily Ittehad and Mrs. Saju Hosein will be able to print and publish the same. That order was out and out illegal for the following reasons:-

- (i) The order was passed coram non judice.
- (ii) The Board cannot itself authenticate a Declaration. The DM has the sole authority do so.
- (iii) The order dated 12.08.2010 was passed illegally, unlawful and with a malafide motive since nowhere in the order has it been stated that Mr. Oli Ahad was represented by his daughter, Barrister Rumeen Farhana, who was present before the Board.
- (iv) The Board completely ignored the fact that the DM categorically stated that the Declaration for Ittehad still stood in Mr. Oli Ahad's name, which has not yet been cancelled.
- (v) The Board, with an ulterior motive, refrained from taking into account the fact that unless "Form C" has been signed, Form B cannot be acted upon. In the instant case since Mr. Oli Ahad never signed, "Form C", the Declaration cannot deemed to have been transferred to

anyone. So the Declaration still remains in the name of

Mr. Oli Ahad.

(vi) The Board failed to consider that there cannot be an auto cancellation of Declaration for a newspaper. Mr. Oli Ahad was never served with any show cause notice by the government which is the basic requirement of natural justice.

(vii) The Board, for reasons best known to it, failed to consider the fact that there are thousands of newspapers which can be taken by Mrs. Saju Hossain. She only wishes to use the reputation of Ittehad, built by Mr. Oli Ahad, using all her unholy power.

(viii) The order dated 12.08.2010 was passed Board in clear violation of the fundamental rights of Mr. Oli Ahad as guaranteed under Article 29, 31 and 39 of the Constitution.

(ix) The order dated 12.08.2010 was so malafide that a Division Bench of the High Court Division in its judgment, dated 10.11.2010, in Writ Petition No. 7186 of 2010 and 7613 of 2010 termed the order dated 12.08.2010 as a biased one.

(x) It appears from the application that the applicant only prayed for a direction to be issued upon the DM requiring him to authenticate the Declaration, but the Board, by traveling beyond its jurisdiction, usurped the power of the administrative authority and itself authenticated the Declaration in applicant's name.

Being aggrieved by and dissatisfied with the above stated order, dated 12.08.2010, Mr. Oli Ahad filed Writ Petition No.7186 of 2010 before the High Court Division. This Division made the Rule absolute and remanded the matter for a hearing de-novo, which hearing, eventually engendered the last judgment of the Board dated 27th July 2011.

After receiving this Division's judgment, dated 10.11.2010, Mr. Oli Ahad signed "Form C" and resigned from his post of Publisher of Ittehad on 05.12.2010. Then, the application, submitted by Barrister Rumeen Farhana, the daughter of Mr. Oli Ahad under "Form B", had been acted upon. There was no stay order from any Court of this Country on Ittehad and hence there was no bar in transferring the same to the respondent No.2. The DFP, vide a Memo dated 13.12.2010, stated that it has nothing to do with the change of publisher of any newspaper and made it clear that the DM is the sole authority for this purpose. Bangladesh Police (Special Branch) vide a Memo dated 22.12.2010, gave clearance in favour of Barrister Rumeen Farhana. Lastly, the DM vide a Memo dated 23.12.2010, authenticated the Declaration in favor of Barrister Rumeen Farhana. Ittehad is now being printed and published regularly. Hence there is now no scope to authenticate the Declaration of Ittehad in anybody else's name, let alone in the name of the petitioner.

The petitioner knowing fully well the above facts, with a malafide motive, just to harass the respondent No.2, filed the instant Writ Petition and obtained Rule and Stay, by misleading the Court and suppressing material facts that the Declaration of Ittehad has already been transferred and authenticated in the name of respondent No.2 on 23.12.2010.

Mr. Oli Ahad never divested his right in Ittehad in anyone's favour, let alone in favour of Mr. Akterul Alam. Before the execution of "Form C", Aktarul Alam died and Mr. Oli Ahad vide another Deed, cancelled the Deed of Transfer. He never signed "Form C", the Declaration was never authenticated in the name of late Mr. Akter-Ul-Alam. So the declaration remained in the name of Mr. Oli Ahad until that date when he ceased to be the printer by filling in Form C with the contemplation that his daughter, the respondent No. 2, would step into his shoes.

There is a clear bar in section 12(2)(c) of the Act, to authenticate a Declaration of a newspaper in anyone's name if there

existed another newspaper in the same name and published in the same language.

As the Rule matured, Mr. Mainul Hussain, appearing for the petitioner submitted that the petitioner has a very cordial ties with Mr. Oli Ahad's family and hence there exists no bad blood or acrimony between them. He went to say that the petitioner is particularly interested in Ittehad because of sentimental reasons as her father-in-law, the legendary Tafazzal Hussain Manik Miah, worked for this news paper in Kolkata. He maintained that it is the law points that the petitioner was concerned with, rather than with any factual aspect.

According to him, as the news paper concerned remained **interlunated** for a period in excess of 6 months, the authentication of Declaration accorded to Mr. Oli Ahad died a natural death by operation of Section 9(3)(b) of the Act, without further ado.

It is also his case that as Mr. Oli Ahad, vide a duly executed deed of transfer, dated 06.03.2008, gave up all his rights and title in

favour one Mr. Aktarul Alam, the earlier was not in a position to publish the weekly and nobody else possessed a Declaration to publish the same. In his submission the Board misdirected itself in disclaiming jurisdiction in the pretext of non-maintainability. He said that if newspaper remains out of publication for the period stipulated in Section 9, the Declaration automatically subsides.

Mr. Abdul Matin Khasru, on the contrary, submitted that no error is reflected in the Board's decision, because, although a Declaration is destined to extinguish by operation of Section 9(3) of the Act, if a weekly does not get published for an **unintermittent** period in excess of 6 months, which had not happened in the instant case, that does not follow that the necessity of **audi alteram partem** vanishes. He also posited that there was no transfer of Declaration to said Aktarul Alam for the simple reason that, as a Declaration is not a chattel, it can not be transferred. He said that the petitioner had failed to substantiate the claim that the newspaper remained dormant for over six months.

For us the decisive question is whether the Board embarked upon any error by declining jurisdiction, concluding that the respondent's application was not maintainable.

It is axiomatic that the petitioner, as the appellant before the Board, did not invoke Section 20(2) of the Act because it was not her claim that a Declaration, previously authenticated in her favour, was subsequently rescinded. So, from that point of view the Board entertained a technical error. That said, however, we are to explore whether that error was of any substantive nature and whether the same had occasioned any predicament to the petitioner before us.

The petitioner's appeal before the Board was founded on the claim that the Declaration previously authenticated in favour of Mr. Ahad faced a natural demise by operation of Section 9(3) of the Act by reason of the fact that the newspaper remained eclipsed for a period beyond six (6) months, and hence, the petitioner erected her claim by engaging Section 12(4) read with Section 9(3) of the Act. He went on to proffer that as Section 9(3) stipulates that Declaration in

respect to a newspaper becomes null and void if publication of the same remains in abeyance incessantly for a period exceeding six (6) months, no further move is envisaged to pronounce nullity. In his vocabulary, it is ipso fact: it happens by automation.

Although there can be no qualm on the proposition that if dormancy pervades for longer than 6 months, **cadit quaestio**, we are, nevertheless, unable to accede to the enunciation that nothing else is to be done when such a scenario prevails.

Obviously Section 9(3) **surmons** that nullity occurs in the event the publication remains at the bay during the covenanted period. But the question is, how on earth, would the authorities determine whether the contemplated state of affairs had actually sprung up, unless the person to be affected is given a right to advance his version? Mr. Khasru was, hence quite congruous in asserting that if it is alleged that the stipulated event had taken place, the interested person must be allowed to put his card on the table, without which there cant not be a determination as to the existence of the alleged occurrence.

Mr. Moinul Hussain submitted that Mr. Oli Ahad transferred his rights and title on the weekly Ittehad to one Mr. Aktarul Alam and hence Mr. Oli Ahmed was not in a position to publish the weekly and nobody else had an authenticated Declaration to publish it, and as such, there was no publication **de jure**.

As Mr. Matin Khashru rightly submitted, the Declaration of a newspaper is neither a chattel nor a chose in action. This is a kind of a non transferable license, issued to an individual at the discretion of the DM. It is abundantly clear from the text in Section 12(2) that before authenticating a Declaration, the DM is to be satisfied on a number of criteria and that the authenticated Declaration can not be transferred by the recipient of the same. This is only a licensed possession, not an asset.

One can, ofcourse, transfer the ownership of the assets pertaining to a newspaper, inclusive of its goodwill, because they are part of his transferable **personalty** or realty. But that transfer has no bearing on the Declaration, which is no part of the beneficiary's

wealth. It may, we reckon, quite aptly be equated with a gun license.

Indeed an agreement for transferring or assigning an authenticated Declaration is void being repugnant to public policy, and hence the purported **promisee** can not sue the **promisor**, although he can do so in the event the person who ties a contractual knot and thereby sells the property associated with his newspaper, including its goodwill, refuses to transfer the same, but not if the **promisor** declines to transfer the authenticated Declaration, simply because the law does not allow him to do so, although transfer of the assets of a newspaper, barren of Declaration, may prove futile though, because the buyer would not be able to publish it without authenticated Declaration in his favour.

What is crystal clear from the relevant provisions of the Act are that a Declaration in respect a news paper can only be authenticated in favour of one person or one set of persons only, which connotes that so long as the incumbent retains the authentication or the same is not reduced to nihility, the DM can not authenticate a Declaration in

favour of another. So, there has to be a vacancy which can occur by operation of law, as envisaged by Section 9(3) i.e. if the newspaper remains in hibernation for either 3 or 6 months, as the case may be, or if the incumbent grantee ceases to be the publisher or printer and then intimates the DM by filling up Form C, as is embodied with the Act, that he has (in the past tense) ceased to be the printer/publisher, if he leaves Bangladesh, if the language of the newspaper witnesses a change. Again simple cessation will not occasion a vacancy unless that factum is brought to the DM's notice by executing a Form C, as printed by the legislators and embodied to the Act.

Now, it is also as clear as an Alpine avalanche from the text in Section 16 of the Act that if a person wishes to abdicate his right on the authenticated Declaration, he has been credited with, he must not only cease to be the printer/publisher de-facto, i.e. by bringing the publication to a halt, but must also appear, by person or through an agent, before the DM and intimate the latter, by subscribing to Form C in duplicate, that he has ceased to be the printer or publisher. Vacancy

in respect to the authenticated Declaration is a *sina qua non* if a fresh authentication is to be issued in favour of another. Unless and until the incumbent grantee of the Declaration has subscribed to Form C after ceasing to be the printer, in duplicate, there shall be no vacancy even if he had ceased to be the printer or publisher. Until that act has been resorted to by the reigning beneficiary, the Declaration remains recorded in his name, whether he likes it or not.

Form C is an integral part of the Act. It has been specifically phrased and designed by the legislature, its object, purport and realm has been meticulously determined and it has been embodied as an inseparable and immutable part of the Act in the same way the Parliament embodied a number of Forms in the Companies Act 1994 as well as in some other legislations. So, filling up the very Form C, as has been printed by the Parliament itself, is indispensable if a grantee wishes to intimate the DM that he has ceased to be the printer/publisher of the given newspaper, of course after he so ceases.

Now, we have been **gobsmacked** to see at page 67 of the respondents' pleading that the DM has printed a document of his

choice and projected it as the Form C, although that chit goes nowhere near what the Parliament printed as Form C. It is not only in Bengali, but it is not even the true translation of the Form C as printed by the Parliament nor does it carry the same message or meaning. It is not even phrased in a way which would fulfill the purpose contemplated by the Parliament. This purported document carries and conveys a very different purport and meaning. Whereas Form C, as printed by the Parliament, is a document by subscribing to which the subscriber intimates the fact that he has ceased to be the publisher and the printer of the subject news paper, at a point in the past, the document as has been printed by the DM, pretending that it as a replica of Form C as embodied in the Act, has been phrased in such a way that the same is to be used as a device for expressing a desire to resign, rather than as a document for intimating that he had already ceased to be the printer or publisher (a past, not a present event). So the difference is diametrical. It is like masquerading a jackal as a dog, which are not only of dissimilar look, but are also of different breed and character.

Given that Form C has been made an un-severable part of the Act, and given that Section 16 **mandatorily** requires such a postulant to intimate the DM by, and only by, subscribing to the specific Form C as printed by the Parliament, it goes without saying that the original grantee does not, and indeed, can not, cease to be the recorded possessor of the authenticated Declaration, even if that be his wish, without intimating the DM, by affixing his signature on the Parliament printed version of Form C in its undistorted and **undeviated** form. Since that has not been done by Mr. Oli Ahad, when he allegedly wished to part with the Declaration, in favour of Mr. Aktarul Alam, no vacancy had ever occurred. The same applies to Ms. Rumeen Farhana in that since Mr. Oli Ahad affixed his signature on the distorted, wrong and, truly, an artificial so called Form C, which has little relevance and commonness with the Form C, the Parliament has printed, and which appears to have been printed at the whim of the District Magistrate, no vacancy occurred and hence, purported authentication of a Declaration in favour of Ms. Rumeen

Farhana is also non est, in the eye of law. That quandary can however be cured without a fuss if Mr. Oli Ahad ceases to be the publisher first and then intimates the DM by putting his hands on the real and genuine Form C as printed by the Parliament and embodied in the Act. The respondent No. 2 was wrong in stating in her pleading “Mr. Oli Ahad signed Form C and resigned from his post”, because Form C is not the document by executing which a grantee resigns, it is that document by which the grantee, after ceasing to be the publisher, must intimate the DM that he has so ceased. Form C is not meant to be an instrument for tendering resignation.

It goes without saying that the DM, and for that purpose, none else, can alter any part of a legislation. If he purports to do so, he will effectively usurp the role of the legislators and, to be more specific, shall purport to assume the role of supra legislature, yet that is exactly what the DM has done in drafting his own version of so-called Form C. He has, whether consciously or not, purported to alter a part of the Act by printing a document at his own choice, without having

any regard to the Form Parliament printed and then projecting the same as a replica of Form C.

Given that it has remained a time tested and high preponderant authority that schedules to statutes are as much part of an Act as any other, and may be used in construing provisions in the body of the Act (R-v-Legal Aid Committee no. 1 ex-parte **Rondel** 1967 2QB482, Lloyd-v-**Blassey** 1969 2WLR 310,) and that provisions in a schedule is to be construed in the light of what is enacted in the sections (I.R.C-v-Littlewoods Mail Order Stores Ltd. 1963 AC 135), truth shall face no casualty if it be iterated that an attempt to distort a form that finds its threshold in the schedule to an Act is as bad and grotesque as an attempt to distort the text in a section of the Act. Nobody can arrogate to himself any authority to deface anything figured in a statute.

Our above finding also triggers a much more complicated issue: was the original authentication valid in the eye of law? Again, authentication can be signified only after the seeker fills in Form B, which is also very much a part of the Act. Although the document at

page 70 of the respondent’s pleading reveals that form is in a different vernacular, it depicts a correct translation of the English version and conveys the same message and purport as the Parliament printed one does, save that it is impregnated with certain superficial inclusions, like the words “AwZwi ³ †Rjv †gmR†ó†Ui Av`vj Z, XvKv ” as well as a paragraph, which beginnings with the words Awg GB g†g©Av†i vI †NvI bv Kwi †ZiQ -- - - - -

In our view Declaration granted through this Bengali version Form B can pass the test of validity, but the additionally inducted phrases must be wiped off.

Any way, in so far as there is nothing to unveil that there was a period of lull in the publication of the newspaper, or that by executing an undistorted Form C, Mr. Ahad intimated the DM that he had ceased to be the printer, we can only be swayed to the **unjettisonable** equation that there never existed a vacancy. This leads us to the inevitable synthesis that it was not open to the DM to authenticate a

new Declaration in favour of anyone, inclusive of the petitioner before us, nor, even in favour of the respondent no. 2. A fortiori, the petitioner had no claim under Section 12(4) of the Act and hence the Press Appellate Board had nothing to assume jurisdiction for. Mr. Ahad is still the holder of the authenticated Declaration. If he wishes to part with it, he must first cease to be the printer/publisher and then must affix his signature on a true, genuine and undistorted Form C, i.e. the Form C that has been embodied with the Act by the legislators, not on the DM invented distorted version.

For the reasons assigned above, the Rule is destined to founder, wherefor the same is discharged.

There is no order on cost.

Jahangir Hossain, J:

I agree.